

BILL NO. S-91-12-01

SPECIAL ORDINANCE NO. S- 315-91

AN ORDINANCE approving RESOLUTION 79-132-5 between CONRAIL and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

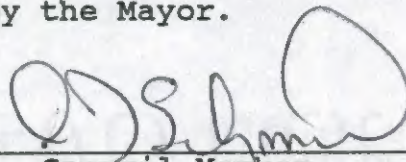
NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That RESOLUTION 79-132-5 by and between CONTAIL and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, for:

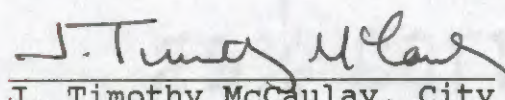
the purchase of easements from Conrail in connection with the Rivergreenway as per Resolution 79-132-5, attached herewith and made a part hereof;

the purchase price is Fifteen Thousand Dollars (\$15,000.00), all as more particularly set forth in said Resolution, which is on file in the Office of the Board of Public Works and, is by reference incorporated herein, made a part hereof, and is hereby in all things ratified, confirmed and approved. Two (2) copies of said Resolution are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCaulay, City Attorney

RESOLUTION 79-132-5

BOARD OF PUBLIC WORKS
CITY OF FORT WAYNE, INDIANA

WHEREAS, in 1983 the Board of Public Works approved construction of Levee Improvement Project on the north bank of the St. Marys River in the vicinity of the Third Street Pump Station; and,

WHEREAS, said levee improvement project was constructed at the same time and in harmony with rivergreenway path improvements; and,

WHEREAS, Conrail owns and operates a railroad spur line in this vicinity that provides service to the City Water Filtration Plant; and,

WHEREAS, part of the levee improvement was constructed on land subsequently determined to be owned by Conrail; and,

WHEREAS, Conrail has sought payment for the use of this land; and,

WHEREAS, the Associate City Attorney has concluded negotiations with Conrail for settlement of easement costs for 3 parcels of land listed as follows:

1. Parcel No. 1 - located on the east side of Barthold Street on the north side of St. Marys River.
2. Parcel No. 2 - located east of Harrison Street, just south of the Schabb Metal Co. building.
3. Parcel No. 3 - the area bounded on the east by Calhoun Street and located south of Third Street Pump Station.

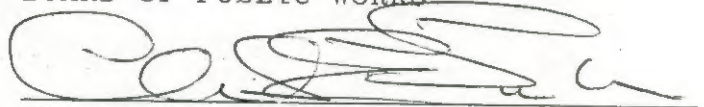
(see attached Legal Descriptions dated May 30, 1990); and,

WHEREAS, on February 12, 1990 the City agreed to purchase easements for the above stated 3 parcels in the amount of Fifteen Thousand Dollars (\$15,000.00). (see attached letter dated February 12, 1990)

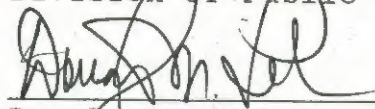
NOW THEREFORE, be it resolved that the Board of Public Works directs the Purchasing Department to issue a Purchase Order for payment of these easements.

Approved this 16 day of October, 1991.

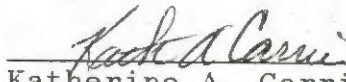
BOARD OF PUBLIC WORKS



Charles E. Layton, Director
Division of Public Works

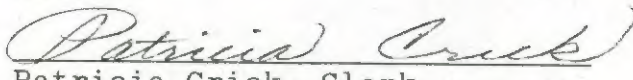


Douglas M. Lehman, Director
Division of Finance & Administration



Katherine A. Carrier
Board Member

ATTEST:



Patricia Crick, Clerk

RECEIVED
City of Fort Wayne
OCT 10 1991
LAW DEPT.

THIS INDENTURE WITNESSETH, that CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, whose mailing address is Six Penn Center Plaza, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, for and in consideration of the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00), to it paid, the receipt of which sum is hereby acknowledged, does GRANT to the CITY OF FORT WAYNE, DEPARTMENT OF PARKS AND RECREATION, a Municipal Corporation of the State of Indiana, having a mailing address of Fort Wayne, Indiana 46802, hereinafter referred to as the Grantee, a non-exclusive easement for the purpose of constructing, operating, controlling, maintaining and reconstructing a public bicycle/hiking jogging trail and its appurtenances, and a flood protection levee on, over, under, along and across the surface of the following described Premises:

ALL THOSE CERTAIN three (3) pieces or parcels of land of the Grantor, being portions of the line of railroad known as the Penn Central Waterloo Branch and identified as Line Code 3136B, being parts of the Northwest Quarter, Section 2, Township 30 North, Range 12 East, and situate in the City of Fort Wayne, County of Allen and State of Indiana, all as indicated by "ET" on Grantor's Case Plan No. 69840, dated March 21, 1991, being further described as follows:

Parcel 1

COMMENCING at the intersection of the west right of way line of Barthold Street and the centerline of the right of way of Consolidated Rail Corporation, said centerline assumed to be the centerline of existing tracks; thence southerly along said west right of way line, a distance of 10 feet, more or less, to the point of BEGINNING; thence easterly measured 10 feet southerly of, parallel and concentric with said centerline of Consolidated Rail Corporation, a distance of 630 feet, more or less; thence southerly along a line, radial to said centerline of Consolidated Rail Corporation, a distance of 40 feet, more or less, to the south right of way line of aforesaid Consolidated Rail Corporation; thence westerly along said south right of way line and passing through a portion of St. Marys River, a distance of 625 feet, more or less, to the aforesaid west right of way line of Barthold Street; thence northerly along said west right of way, a distance of 40 feet, more or less, to the point of BEGINNING.

CONTAINING 0.58 of an acre, more or less, of land.

Parcel 2

BEING a part of Lot Numbered 7 in Wells Reserve; the southeasterly 10 feet of the right of way of Consolidated

Rail Corporation, said southeasterly 10 feet bounded by the easterly right of way line of North Harrison Street on the southwest and the east line of Lot Numbered 7 in the Wells Reserve on the northeast. The above-described southeasterly 10 feet is located along the approximate top of bank of the St. Mary's River.

CONTAINING 0.11 of an acre, more or less, of land.

Parcel 3

BEING a part of Lot Numbered 7 in Wells Reserve.

BEGINNING at a point approximately 10 feet, measured perpendicularly, southeasterly of the centerline of the near track of Consolidated Rail Corporation at approximately Railroad Station 194+09; thence southerly, a distance of 66 feet, more or less, to St. Mary's River; thence southeasterly, a distance of 80 feet, more or less, to the center of St. Mary's River; thence northerly along said centerline, a distance of 620 feet, more or less, to the intersection of said centerline with the southeasterly prolongation of the southwesterly line of the 3rd Street Stormwater Pump Station; thence northwesterly along said prolongation and southwesterly line, a distance of 200 feet, more or less, to a point approximately 10 feet, measured perpendicularly, southeasterly of aforesaid centerline of Consolidated Rail Corporation at approximately Railroad Station 194+49; thence southwesterly along a line approximately 10 feet, parallel and southeasterly of said centerline of Consolidated Rail Corporation, a distance of 40 feet, more or less, to the place of BEGINNING.

CONTAINING 2.24 acres, more or less, of land.

BEING a portion of the same premises which Fort Wayne and Jackson Railroad Company, by Conveyance Document No. FtW&C-CRC-RPI-1, issued pursuant to the Regional Rail Reorganization Act of 1973, as amended (P.L. 93-236, H.R. 9142), the Final System Plan of the United States Railway Association and Special Court (Washington, D.C.) Misc. Order No. 75-3, dated March 25, 1976 and March 31, 1976, in the Matter of Regional Rail Reorganization Proceedings, granted and conveyed certain property, easements, interest and rights unto Consolidated Rail Corporation and which Conveyance Document was recorded on February 29, 1980 in the Recorder's Office of Allen County, Indiana, as Document No. 80-04592.

THE easement herein granted is subject to the railroad and any other facilities which may be located on the Premises; and the Grantor reserves for itself and its successors and assigns, the right to use said Premises or any part or parts thereof for any railroad purposes and also for any and all other purposes which are not inconsistent with or which do not interfere with or impair the rights herein granted.

AS further consideration for the easement herein granted, Grantee hereby covenants and agrees with the Grantor herein that:

(a) The rights hereby granted are subordinate to the paramount right of the Grantor to use and occupy all or any portion of the Premises in any manner whatsoever, provided, however, that any such use or occupancy shall not interfere unreasonably with the exercise by Grantee of the right herein granted.

(b) Grantee, its successors and assigns, shall maintain the Premises in good condition and repair as a public bicycle/hiking, jogging trail and/or for flood protection

levee, including, but not limited to cleaning, snow removal, mowing, and landscaping, and shall pay all expenses necessary for the maintenance and repair of the Premises.

(c) This Easement may be amended, modified, in whole or in part, or terminated, at any time upon written approval and agreement of both Grantor and Grantee or their respective successors and assigns which amendment, modification or termination shall become effective upon recording an executed copy of the same in the office of the Recorder of Allen County, Indiana.

(d) Except as otherwise expressly provided herein, all covenants and agreement contained in this Easement affecting the Premises shall be and constitute covenants running with the land and shall bind and inure to the benefit of each of the owners, its successors or assigns, provided, however, that the same shall not constitute conditions, and no breach or violation thereof shall result in any forfeiture or loss of title by Grantor to Grantee.

(e) Nothing contained in this Easement shall be construed to make the parties hereto partners or joint venturers, or to render any of said parties liable for the debts or obligations of the other, except for the specific obligations stated herein.

(f) This Easement is specifically subject to that particular Indemnification Agreement executed by Grantee.

(g) If and when the Premises or any part thereof shall cease to be used by the Grantee for the purpose hereinbefore mentioned, then the easements and rights hereby granted shall immediately cease and terminate as to so much of the land which shall so cease to be used for the purposes herein intended; and such easements and rights shall revert to the Grantor with the same force and effect as if these presents had never been made.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

— IN WITNESS WHEREOF, the said Grantor has caused

this Indenture to be executed by M. Virginia Ebert, its Director-Management Services, and attested by

J. D. McGEEHAN its Assistant Secretary, this 30th day of April A.D. 1991.

Signed, sealed and delivered in the presence of:

CONSOLIDATED RAIL CORPORATION
By:

Juliana R. Sparks

M. Virginia Ebert
M. Virginia Ebert, Director-
Management Services

ATTEST:

Margaret M. Levy

J. D. McGEEHAN
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)
: ss
COUNTY OF PHILADELPHIA)

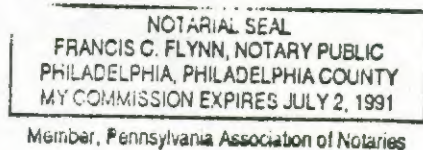
BEFORE ME, the undersigned, a Notary Public in and for said Commonwealth and County, personally appeared M. Virginia Ebert, as Director-Management Services and its Assistant Secretary, respectively, of CONSOLIDATED RAIL CORPORATION, and severally acknowledged the execution of the foregoing Instrument to be the voluntary act and deed of said CONSOLIDATED RAIL CORPORATION, and their voluntary act and deed as such officers.

WITNESS my hand and notarial seal, this 30th day of April A. D. 1991.

Francis C. Flynn
Notary Public

THIS INSTRUMENT PREPARED BY:

Juliana R. Sparks
Consolidated Rail Corporation
Fifteenth Floor, Six Penn Center
Philadelphia, Pennsylvania 19103
Case No. 69840



:nls

Read the first time in full and on motion by Belmont, seconded by Quadd, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 12-10-91

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Disjunct, seconded by Quadd, and duly adopted, placed on its passage. PASSED ~~Lost~~ by the following vote:

| | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|--------------------|-------------|-------------|------------------|---------------|
| <u>TOTAL VOTES</u> | <u>9</u> | _____ | _____ | _____ |
| <u>BRADBURY</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>BURNS</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>EDMONDS</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>GIAQUINTA</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>HENRY</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>LONG</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>REDD</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>SCHMIDT</u> | <u>✓</u> | _____ | _____ | _____ |
| <u>TALARICO</u> | <u>✓</u> | _____ | _____ | _____ |

DATED: 12-26-91.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) ~~(APPROPRIATION)~~ ~~(GENERAL)~~ ~~(SPECIAL)~~ ~~(ZONING MAP)~~ ORDINANCE RESOLUTION NO. J-315-91. on the 26th day of December, 1991

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of December, 1991, at the hour of 1:30 o'clock PM, E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 3rd day of January, 1992, at the hour of 11:40 o'clock PM, E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Purchase of easements from Conrail in
connection with Rivergreenway.

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: See attached resolution.

EFFECT OF PASSAGE: See attached resolution.

EFFECT OF NON PASSAGE:

J-91-12-01

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$15,000.00

ASSIGNED TO COMMITTEE:

BILL NO. A-91-12-01

REPORT OF THE COMMITTEE ON FINANCE

MARK E. GIAQUINTA, CHAIRMAN
DONALD J. SCHMIDT, VICE CHAIRMAN
BRADBURY, REDD, BURNS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving RESOLUTION
79-132-5 between CONRAIL and the City of Fort Wayne, Indiana,
in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Mark E. Giaquinta
Donald J. Schmidt

J. Bradbury

DATED: 12-19-91

Sandra E. Kennedy
City Clerk